STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Investigate New York Telephone Company's Proposal to Discontinue Offering Information Services	Case 98-C-1079

Prefiled Testimony of Walter Boxer

Q. Please state your name and residence.

A. WALTER BOXER. I am a New York resident.

Q. Please identify the companies you represent?

A. I am the sole shareholder in Dynatech Communications, Inc. ("Dynatech") and Infotel, Inc. ("InfoTel"), both New York telephone information providers. I have been a businessman for nearly twenty years.

Q. Describe your background as an information provider?

A. I have been involved in providing telephone information services in the New York metropolitan area since December 1986. I have also been involved in industry trade associations for many years, serving as past President of the Association of Information Providers of New York, a trade association consisting of 30 - 40 information provider members.

Q. Why are you submitting this testimony?

A. I submit this testimony in opposition to the application of New York Telephone Company d/b/a Bell Atlantic - New York ("BA-NY") for the right to terminate all its New York State InfoFone service, including all New York telephone information services provided by Dynatech and Infotel. If BA-NY is permitted to terminate this service, Dynatech and Infotel's business will be destroyed, its employees will all be terminated, and its customers will be deprived of this service.

Q. When did you become a subscriber of BA-NY's InfoFone telephone information service?

A. In early 1982, I read about BA-NY's InfoFone telephone information service, became interested in it, and immediately applied for a line. I was advised at that time that BA-NY had a waiting list of about five years for this service.

Four to five years later, following an apparent expansion in the number of available channels from 22 to 44, I obtained a single mass announcement program from BA-NY.

Q. When were Dynatech and Infotel formed?

A. In or about April 1988, BA-NY commenced its IINS interactive service. At or about that time, I formed two wholly owned New York corporations, Dynatech and Infotel, and obtained one IINS telephone number for each corporation,

each number having numerous lines. Since then, Dynatech and Infotel have grown significantly in both number of lines and call volume. Today, Dynatech operates 45 information programs and Infotel operates 17 with seven employees.

Q. What telephone information services do Dynatech and Infotel offer?

A. Infotel, Inc. offers 540 psychic services in English and Spanish using BA-NY's InfoFone service. Dynatech primarily operates adult programming, in English and Spanish, but also in Russian, and primarily using BA-NY's 970 service. 1/

Q. Please describe the background of the callers to services offered by Infotel and Dynatech and the reasons they call your service.

A. Many callers to these programs are Spanish speaking recent immigrants. Many, including Spanish speaking immigrant callers who call the adult 970 lines, are truly seeking advice or just someone to speak to. Subjects discussed on these calls, including subjects discussed on the 970 lines, often involve family, culture, social

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1/ About 50% of Dynatech callers are English speaking and 50% are Spanish speaking. All Dynatech employees are bi-lingual.

services, friendship, loneliness, and other issues wholly unrelated to adult entertainment.

Q. How are your companies services advertised?

A. Infotel and Dynatech both advertise their services, spending substantial sums on advertising each year. Dynatech and Infotel are among the largest advertisers in El Diario, the largest Spanish speaking language newspaper in New York, and in other alternate and local minority Manhattan newspapers, such as the Amsterdam News and the Manhattan Spirit.

Q. Does Dynatech offer services in other languages?

A. Dynatech also offers Russian language adult programs and formerly offered Chinese language (Mandarin and Cantonese) programs that were advertised in local Russian and Chinese newspapers. The Chinese program was terminated because call counts provided by BA-NY were 50% below the actual call count, as registered by Dynatech's own call receiving equipment (which has always proved accurate). 2/ After months of unsuccessfully attempting to induce BA-NY to correct the deficiencies in its local call count mechanism (the calls were mostly from Chinatown and Flushing), Dynatech was forced to cancel the service;

2/ Dynatech uses an IVR to count every call to each of its information programs.

recovery of revenues on only 50% of the calls was inadequate to support the service.

Q. What would be the effect of termination of this service?

A. If BA-NY terminates this service, Dynatech and Infotel will terminate their business, all employees will be terminated, and thousands of New York customers will be deprived of desired services.

Q. Are there any competing local exchange carriers ("CLECs") who have offered to provide similar service?

A. To my knowledge, there are no competing local exchange carriers ("CLECs") able and willing to provide this service. Even if there were, I would be reluctant to obtain services from them in view of my past experience in using a carrier other than BA-NY to provide these services.

Q. What past experiences would make you reluctant to subscribe to a service offered by a CLEC?

A. In or about January 1991, Infotel obtained a "900" line from Telesphere, an interexchange carrier ("IXC"). After leasing equipment to provide this service, spending substantial sums to operate this service, and spending amounts on advertising to create a customer base for these services, Telesphere, began appropriating revenues belonging

to information providers for their own use rather than passing them on to the information providers as required. In or about September 1991, Telesphere terminated its business and filed for bankruptcy, owing me and many other InfoFone providers very large sums of money, rendering our advertising useless, and leaving us with stranded equipment.

I am therefore keenly aware of the devastating consequences to my business of an unreliable carrier. It is my understanding that New York CLEC's are generally small start up operators competing against the BA-NY monopoly. A regular customer would be briefly inconvenienced if a CLEC went out of business, but could immediately move to another carrier, such as BA-NY. But an InfoFone IP's business would be destroyed since there would be no other carriers offering the service and no place to transfer the business on an immediate basis.

Moreover, I am aware of the service problems associated with the use of IXCs and CLECs. In 1997, my companies subscribed to local service provided by Worldcom. After being assured that Worldcom's services were identical to those offered by BA-NY, I learned that, on the contrary, Worldcom would not permit me to access BA-NY's InfoFone services through their lines. Further, when service problems arose, Worldcom and BA-NY each found the other was to blame and refused to fix the problem. The problem was only resolved when I switched back to BA-NY.

Q. Are there any restrictive features to BA-NY's billing and collection agreement that you know of?

A. BA-NY's billing and collection agreement also permits BA-NY to preclude a carrier using BA-NY's billing and collection services from publishing a marketing message for information services provided by information service customers on the monthly customer bill if that message refers to or implies any direct competition with an information service provided by BA-NY. See Exhibit C to BA-NY's IXC billing and collection agreement annexed as Exh. K. This provision could prevent information providers from advertising many services which compete with BA-NY.

Q. Has BA-NY ever provided, or is BA-NY now providing, information services that compete with the services offered by its InfoFone carriers.

A. It is my understanding that BA-NY began to provide telephone time and weather services nearly a quarter century ago as a monopoly service. Following divestiture and the AT&T consent decree, BA-NY was permitted to continue to run that service, but was required to auction the right to operate the service to independent third parties.

Since then, BA-NY has engaged in periodic auctions of the right to operate BA-NY's time and weather services and continues to realize financial benefits from its ownership of those services. Accordingly, all other time

and weather services compete with BA-NY's time and weather service.

Moreover, BA-NY has previously operated other information services business. Several years ago, I was an advertiser in a BA-NY affiliate's information service known as Consumer Tips. This BA-NY information service permitted callers to press telephone touch tone buttons to obtain various information services provided by BA-NY such as time, weather, lottery, sports, horoscopes, etc. See Exh. I. Advertisers would pay New York Telephone a monthly fee for the right to advertise their services on New York Telephone's "Consumer Tips" Hotline. It is my best recollection that many advertisers, including my companies and some other information providers, paid New York Telephone about $100 per month to advertise their services in connection with BA-NY's "Consumer Tips" and that BA-NY promoted its own telephone information services in this way. My companies stopped advertising their services in connection with BA-NY's Consumer Tips information services in or about August 1997. I do not know whether BA-NY continues to offer this service.

Q. What information services does BA-NY currently offer?

A. Currently BA-NY offers a pay-per-call telephone information service under the 411 exchange (35 cents per call, with an additional 35 cent charge for automatic

connection). BA-NY may also offer other information services not presently known to me. 3/

BA-NY's past and present involvement in the provision of information services could deprive information providers of the right to require BA-NY to include valuable marketing inserts in BA-NY's bill to customers.

Q. Do "900" Information Services provide a viable alternative to the InfoFone information providers?

A. Carriage by an interexchange "900" carrier which suffers from the same inadequacies as carriage by a CLEC and has many other inadequacies. First, a change to a "900" service would result in the IPs' loss of their seven digit telephone numbers. To subscribe to a "900" service, the information providers must obtain a ten digit "900" telephone number. An InfoFone telephone information providers seven digit number is vital to the provider because all the IP's goodwill is vested in its telephone numbers. This goodwill would be destroyed if BA-NY IPs had to operate a "900" service through a different telephone number.

Second, 900 carriers only offer nationwide service. All Infotel customers and more than 90% of

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3/ It is impossible to know what telephone information services BA-NY operates, including what pay-per-call services it operates, in view of BA-NY's persistent refusal to respond to IPs discovery requests on this issue.

Dynatech customers are in the downstate New York metropolitan area LATA. Although Dynatech has five AT&T "900" lines, these lines are for old services with small call volumes that Dynatech maintains only because of their goodwill; they are advertised only in the New York metropolitan area even though Dynatech pays for nationwide transmission of these services, and account for only 5-10% of Dynatech's customers.

Since the IINS service began in 1988, other than my disastrous experience with Telesphere, I have had limited experience with "900" services, and those services have generally been unsatisfactory, especially in the last several years, because (i) the per call costs are much too high; 4/ (ii) many customers will not call a "900" service due to poor reputation or their unwillingness to dial a ten-digit long distance number, (iii) Dynatech only provides a local service, not a nationwide service, and only advertises locally, rendering AT&T's national coverage superfluous and costly and (iv) AT&T and MCI, the major "900" carriers, will not permit adult entertainment programs to be provided on their "900" networks.

4/ AT&T costs are 32 cents per minute, 10% for billing and collection, and $500 per month for the first 900 number and $125 for each additional number plus line charges which for me total $800 per month. In contrast, IINS charges are 26 cents for the first minute, only 7 cents for each additional minute and 12% for billing and collection with no additional charge for the first InfoFone number and total per lines charges of about $18 per month.

Q. Do POTs line services provide a viable alternative?

A. A POTS lines information service paid for by credit cards would also not be viable. A substantial number of callers to my companies' lines are Spanish speaking immigrants and other minorities. My research has indicated that few of these callers have credit cards. If Infotel and Dynatech switched to a POTS line paid by credit cards, most of my companies' callers would be deprived of the benefit of these modest cost services which provide them with someone who speaks their native language. Accordingly, a POTS line would not be suitable for them and they would be deprived of these services. A similar practical barrier would keep these customers from having access to computer internet services at all.

Q. Are BA-NY's call counts accurate?

A. I described above the call count problems experienced with BA-NY's call counts for Dynatech's Chinese language service, which were off by 50%. However, I believe that all BA-NY's call counts generally undercount calls by approximately 10% per month. I have repeatedly complained to BA-NY about call count inaccuracy, but they have failed to take steps to correct the inaccuracy.

Conclusion

In view of the foregoing and as otherwise set forth in the testimony of Richard Cohen, Larry Weiss, Oliver Oziel and Michael Marenick, BA-NY's request to withdraw its InfoFone tariffs should be denied and, BA-NY should compensate all IPs for inaccurate call counts, rectify all call count irregularities, and remove contribution from the InfoFone service, including the interactive (540 and 970), group bridging (550), and Circuit 9 services.

Walter Boxer

Sworn to before me this
11th day of December, 1998

Notary Public

KENNETH G. WALSH
Notary Public, State of New York
No. 02 WA-5011216
Qualified in Queens County
Commission Expires 04/12/99

DIRECT TESTIMONY OF DAVID M. EISENSTADT, Ph.D

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS

A. My name is David M. Eisenstadt. My business address is MiCRA, Suite 900, 1155 Connecticut Avenue, N.W., Washington, D.C. 20036.

Q. WHAT IS YOUR PROFESSION AND BACKGROUND?

A. I am an economist and Principal at MiCRA, a Washington, D.C. based economics consulting and research firm specializing in antitrust and regulatory matters. I hold a Ph.D. in Economics from the University of Illinois. All MiCRA principles are former U.S. Department of Justice, Antitrust Division employees. I was employed at the DOJ from 1979 - 1984 as a Senior Economist. I have been a private economic consultant since 1984. While at the DOJ, I was assigned to matters in the computer, defense, food products, and health care industries. In 1984, I joined the telecommunications economics consulting firm of Cornell, Pelcovits, and Brenner as a senior economist where I worked on a variety of antitrust matters including telecommunications antitrust litigation involving AT&T and local exchange carriers. In 1986, I joined several of my present partners at ICF Consulting Associates. In 1991 we broke off from ICF and formed MiCRA. My curriculum vitae is attached as an Exhibit to this affidavit.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. In November 1998, I was contacted by counsel for the coalition of information providers (IPs) who use Bell-Atlantic New York's (BA-NY's) InfoFone services. I was asked to address the following economic issues: (1) whether the services that IPs purchase from BA-NY are an essential input and facility, (2) whether services provided by IPs who use BA-NY's InfoFone services are likely to comprise one or more relevant product markets for antitrust purposes, and (3) whether the customers of these IPs are likely to pay higher prices if BA-NY terminates InfoFone services in the State of New York.

Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

A. BA-NY's InfoFone services are an essential input and facility into the production of pay-per-call information services to consumers.[1] InfoFone services represent the current, low-cost technology for providing certain pay-per-call information services provided in the New York City area, Buffalo, Albany, and other NY LATAs. Alternative technologies presently or hypothetically available to IPs are more expensive and, if used, would significantly increase IPs' costs of transport, processing, and billing and collection.

It is also the case that IPs who purchase BA-NY's InfoFone services compete most closely with IPs who also purchase InfoFone lines and provide similar services to their customers, and that termination of BA-NY's InfoFone services would result in significant

[1]These services are an essential facility because, among other things, BA-NY is either an actual competitor or potential entrant into the provision of telephone information services.

price increases to their customers. The termination of InfoFone services would eliminate the benefits these customers derive from their present ability to choose among different IPs who offer services with this technology. Put another way, in the terminology of an antitrust economist, the services these IPs provide are likely to constitute one or more relevant product markets.

Q. IN FORMING THIS OPINION, WHAT INFORMATION DID YOU RELY UPON?

A. I have relied on the following: the written testimony of IP providers who are interested parties to this proceeding, extended telephone interviews with IPs, BA-NY's presentation in support of its tariff filing in this matter, market definition principles, my experience as an antitrust economist, and economic logic.

Q: WHAT INFORMATION SERVICES DOES BA-NY MAKE AVAILABLE TO IPs?

A: Since 1988, BA-NY has provided four types of pay-per-call services through its InfoFone services provided in New York State: (1) Downstate 976 Mass Announcement Services (MAS), (2) Interactive Information Network Services (IINS), (3) Group Bridging Services (GBS), and (4) Circuit 9. 976 MAS, IINS, and GBS services all permit seven digit dialing. Downstate, all four InfoFone services are provided by BA-NY through a single Ericsson AXE-10 switch.

Q: WHAT IS THE DIFFERENCE BETWEEN 976 MAS, IINS, GBS, AND CIRCUIT 9 SERVICES?

A: 976 MAS services are mass announcement services using the 976 exchange. Callers receive an approximate one minute pre-recorded announcement such as weather, time, sports information, lottery information, etc. The use of an IMAS switch permits thousands of callers to simultaneously listen to the message. Each 976-XXXX line is dedicated to a particular service. In New York City, 976-1212 is the seven digit number for "weather." Over fifty end user services are currently provided using 976 MAS. BA-NY auctions 976-1212 (weather) and 976-1616 (time) every year.

IINS phone calls permit both normal conversation and, more typically, caller interaction with recorded programs. Callers use their touch tone pad to select recorded information, browse recorded messages, leave and receive messages, make inquiries, etc. Some IINS IPs offer sophisticated interactive programs with many options and features such as personal classified advertising bulletin boards. The services offered may include multiple browsing categories, automatic voice mail, or even one-on-one chat options. Less sophisticated programs provide fewer selections. IPs offer multiple services ranging from weather, foreign language programming, horoscope, sports, dating, and adult content. IINS can also be used to provide passive programming whereby the caller listens without participating in the path or direction of the call.

GBS is used for party conversations or chat lines among two or more participants using the 550 exchange.[2]

For all InfoFone services, BA-NY provides the IPs with call origination, call transport, call processing, and billing and collection services. The IP's charge for each call appears on the BA-NY subscriber's monthly phone bill.

Q: **WHAT IS BA-NY'S TARIFF STRUCTURE TO IPs' FOR EACH OF THESE SERVICES?**

A. Separate tariffs govern the pricing of each InfoFone service to IPs. In the case of 976 MAS, IPs pay BA-NY $0.18 per call. For IINS, BA-NY charges IPs $0.26 for the first minute of use, $0.07 for each additional minute, and 12 percent of the IP's total charge minus the charges for minutes of actual use. Line costs are about $30.00 per month, per line, including taxes and surcharge.[3] An IP who charges customers $0.40 per minute would, for example, pay BA-NY $2.36 for a twenty minute call [$0.26 + 0.07x19 + (($0.40 x 20) - ($0.07x19 + $0.26)) x 0.12]. IINS IPs pay BA-NY its tariffed rates for call minutes when BA-NY removes charges from a subscriber's bill (a procedure known as "chargebacks").

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[2]Circuit 9 allows statewide calling using 10 digit dialing. Only a few providers of Circuit 9 services operate in the state and the IPs who offer these services are not part of the coalition.

[3]Since thousands of calls are typically placed per month on the same line, and calls typically average about 20 minutes, the per-minute cost of the line charge is trivial.

For GBS, BA-NY's approved tariff is $0.10 per minute. Monthly GBS per line charges are $18 per line.

All InfoFone tariffs include (in the basic rate) an element for BA-NY's costs and contribution for billing and collection. In a prior proceeding, the New York Public Service Commission determined that the incremental cost to BA-NY of billing and collection was $0.02 for each 976 MAS call.

Q: **HOW DO IPs SET PRICES TO THEIR CUSTOMERS?**

A: For 976 MAS, BA-NY sets the price; for other services, the IP can determine end user charges. For 976 MAS services, IPs are permitted by tariff to charge customers $0.40 per call. IINS IPs determine their own customer pricing. For example, an IINS IP who charges $0.40 per minute bills the customer $8 for a twenty minute call ($0.40x20).[4] IINS IPs whose billing structure can exceed $3.50 per call must provide a warning ("kill") message within the first twenty seconds of the call to the caller.[5] There are three permitted GBS end user tariffs; however, most IPs who offer this service charge $0.20 per minute of use.

[4]Forty cents per minute is roughly the "going rate" for some IINS dating services in the New York Metro LATA.

[5]The kill message must convey the price for the call, the identity of the phone line, and instructions that the caller won't be charged if they hang up at that juncture. The announcement must be completed within ten seconds and the caller has twenty seconds to hang up. If the caller elects to hang up the IP is charged $0.10 for the call.

Q: DO ALTERNATE TECHNOLOGIES PRESENTLY EXIST FOR PROVIDING PAY-PER-CALL SERVICES?

A: Yes, but they are either more costly for the IPs and/or are inferior in terms of service quality or other attributes from the perspective of the IPs' pay-per-call customers.

Q: WHAT ALTERNATE PAY-PER-CALL TECHNOLOGIES COULD PRESENTLY BE UTILIZED BY IPs?

A: There are two alternate technologies that IPs could utilize to offer pay-per-call services. The first is 900 dialing; the second is POTS in conjunction with credit card billing. For a variety of reasons, IPs indicated they preferred 900 service to credit card billing and use of POTS.

From the perspective of the IPs, 900 service is a considerably more expensive technology than BA-NY's InfoFone services. For small IPs who comprise the majority of providers, the incremental, per-minute cost of transport, billing and collection is about four times greater when 900 lines are used, and more than double the cost for the largest IPs.

For very large IPs, 900 transport costs can average rates as low as $0.22 per minute. Billing and collection costs are assessed separately, and typically average about 8-10 percent of the IP's charge for the call. Additionally, chargebacks are higher when 900 carriers perform billing and collection. One IP indicated that chargebacks for 900 service average 35-40 percent compared to about 10 percent when BA-NY bills subscribers for

IINS calls. Hence, when 900 calling is used, chargebacks are about 250 percent higher.

For the smaller IPs, who comprise the vast majority of IINS providers, and who do not possess digital (T-1) lines, AT&T 900 rates are $0.44 per minute and 15 percent for billing and collection.[6]

To appreciate the magnitude of the cost difference between 900 service and the cost of an IINS line, the transport, and billing and collection cost to an IP of an additional IINS minute purchased from BA-NY is about $0.12 if the IP charges customers $0.40 per minute.[7] This expense includes billing and collection and expected chargebacks. For the largest IPs, the incremental transport, billing and collection cost of a minute of 900 service is $0.34, including the higher chargebacks, if the IP continues to charge $0.40 per minute.[8] Hence, when the largest IPs use 900 service, rather than IINS lines, their transport, billing and collection costs per minute increase by nearly 200 percent.

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[6]The 15 percent charge for billing and collection is based on the entire amount of the IP's charge.

[7]The incremental cost per minute equals $0.07 per minute, plus the IP's charge per minute minus the cost for a minute of use multiplied by 12 percent. For an IP who charges customers $0.40 a minute, an incremental IINS minute costs the IP about $0.11 (($0.07 + 0.12 x ($0.40-$0.07)) . Chargebacks, which average 10 percent, add approximately another $0.01 to the IP's per-minute cost.

[8]The incremental cost per minute is $0.22 plus ten percent of the IP's charge per minute, plus chargebacks which equal 35 percent of the cost for minutes of use ($0.22 + $0.04 + $0.08).

For the smaller IPs who purchase 900 lines at $0.44 per minute, the magnitude of the disparity is even larger and amounts to a more than 400 percent increase. Including chargebacks, the incremental cost of a minute of 900 service for these IPs is about $0.65 if the IP charges $0.40 per minute.[9]

Compared to current IINS rates, use of 900 service would increase transport, and billing and collection costs for most IINS IPs by over fifty cents a minute and roughly a quarter per minute for the largest IPs. Neither small nor very large IPs could remain in business and maintain charges at $0.40 per minute. Instead, prices to customers would increase significantly if 900 service is used in lieu of IINS. One large IP estimated that if it maintained its current call volume, its prices would double if IINS lines were replaced with 900 service. For the smaller IPs, initial price increases would be substantially more.

The other available technology is credit card billing used in conjunction with POTS service. Card billing is impractical for short, mass announcement services like time and weather. IPs would incur significant start up costs marketing and advertising numbers for POTS service. And, discussed below, there are significant reasons why customers prefer not to use credit cards as a method of payment.

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[9]The incremental cost per minute is $0.44, plus fifteen percent multiplied by the IP's charge per minute, plus chargebacks which equal 35 percent of the cost of minutes of use ($0.44 + $0.06 + $0.15). Obviously, no IP would attempt to charge $0.40 per minute when transport charges alone are four cents higher. Because the incremental cost of a minute is partly determined by an IP's customer charges, the example is offered to provide an apples-to-apples comparison of IPs' costs using IINS vs. 900 service.

Q: DO OTHER POSSIBLE TECHNOLOGIES EXIST?

A: BA-NY claims that competing local exchange carriers (CLECs) could hypothetically provide information services. Because there are no current CLEC proposals for me to evaluate, I am unable to compute the transport, billing and collection costs that IPs would incur. However, one IP has estimated that a CLEC would have to charge approximately $0.60 for the first minute of use, more than double what BA-NY charges IINS IPs.[10] Moreover, there are serious questions regarding whether CLECs would or could provide the service. No CLEC has expressed interest in offering any InfoFone service that BA-NY now offers. CLECs have neither approached IPs, nor come forward at any of the meetings hosted by BA-NY and offered to assume provision of any InfoFone service. For mass announcement services, it is questionable whether CLECs have the switch capacity to handle the call bursts associated with peak demand. A CLEC must also arrange for billing and collection. For the call charge to appear on a BA-NY subscriber's bill, the CLEC would have to provide call detail to BA-NY. One IP has determined, however, that BA-NY's billing and collection department will not provide billing and collection to a CLEC.

Even if these technical and institutional constraints could be eliminated, some IP costs would almost certainly increase. IPs will have to spend additional sums in the transition process. For example, there is no guarantee that IPs would keep their current seven digit numbers. BA-NY proposes to return all numbers based on the 540, 550, 970, and 976

[10]The BA-NY charge for the first minute of use to IINS IPs is $0.26.

exchanges to the North American Numbering Plan. There are no assurances that the same seven digit numbers will be assigned to the IPs who presently operate them. The numbers are, however, a valuable asset to the IPs. In some cases, the four digit dialing suffix spells a "vanity" word that callers associate with the specific service. In otners cases, they have simply memorized the IP's number. IPs will incur significant marketing expenses if these numbers are reassigned.

Q: **ARE INFORMATION SERVICES THAT RELY ON ALTERNATIVE TECHNOLOGIES GOOD SUBSTITUTES FOR THOSE PROVIDED VIA BA-NY'S INFOFONE SERVICES FROM THE PERSPECTIVE OF END USERS?**

A: No. Alternative services are either more expensive, and/or do not offer the same attributes as pay-per-call services using BA-NY's InfoFone services.

900 dialing is not a good substitute for pay-per-call services using InfoFone. First and foremost, 900 service is more expensive. Typical per minute customer charges for 900 dating services are two-to-three times more than customer charges on IINS date lines. Second, 900 services require 10 digit dialing compared to only 7 digit dialing for IINS services. The need for 10 digit dialing reduces demand and call volume. Also, there is a stigma attached to using 900 prefixes, and this suppresses the demand for non-adult content services on these lines.

Credit card billing via POTS lines is even less preferred by IPs and their customers for

several reasons. First, usage of IINS such as dating services, lottery results, sports lines, weather information, and adult programming is typically an impulse purchase and not conducive to credit card billing. One IP which offers an IINS weather line indicated it would discontinue this service rather than offer it through credit card billing and POTS. Second, many customers are reluctant to provide credit card information over the telephone. Third, for some services, the caller demographics of credit card users are probably different from the demographic characteristics of callers who use IINS lines. For these services, credit card users are likely to be older and more affluent, while pay-per-call customers are more likely to be minorities, some of whom may lack active credit cards. One IP indicated that given the lower transport costs associated with POTS service, IPs would be foolish to purchase IINS lines if credit card billing in conjunction with POTS was truly a good alternative. The same provider indicated that in Pennsylvania, where it offers a service that is significantly less expensive if payment is made using credit card, the vast majority of callers refuse to use this form of billing.

IPs who offer both services (credit card billing on POTS lines and pay-per-call services using IINS) indicated that the volume of calls on IINS lines dwarfs the volume of credit card calls using POTS lines, even though the generic service (e.g., dating) is the same.

Many services provided through the Internet are inferior to pay-per-call technologies. Only a fraction of households have Internet service. Second, InfoFone services, like mass announcements for weather cannot practically be offered on the Internet. Third, for IINS

services such as dating, the Internet is an imperfect substitute because voice communication is, at present, largely unavailable. That BA-NY's IINS call revenues have remained relatively stable over the past several years, while Internet traffic has significantly grown, suggests that the growth of the Internet has had limited effect on the overall demand for IINS pay-per-call services.[11]

Q: WOULD END USER SERVICES PROVIDED THROUGH IINS CONSTITUTE A SEPARATE ANTITRUST PRODUCT MARKET?

A: Yes. The 1992 Joint Department of Justice and Federal Trade Commission Merger Guidelines (Merger Guidelines) elaborate the paradigm used to define relevant markets. Generally speaking, the relevant market contains the smallest group of competitors who would have to merge, or price in a coordinated fashion, to raise price profitably 5 - 10 percent, for a non-transitory period of time.[12] This group of firms is termed a "hypothetical" monopolist. The determination of whether a hypothetical monopolist of a service could profitably raise prices above current or competitive levels is now a widely accepted methodology for determining relevant market boundaries by antitrust economists.

The available evidence indicates that at least several services provided by IINS IPs are

[11]BA-NY "PRESENTATION IN SUPPORT OF TARIFF FILING," October 6, 1998.

[12]U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, April 1992.

likely to be relevant markets under the Merger Guidelines. The testimony of IPs who offer dating and adult content services indicates that competition between them, rather than competition between IINS IPs and other types of information providers acts as the principal constraint on prices they charge to their customers. Accordingly, if these IPs incur a collective input price increase which amounts to a doubling to quadrupling of their costs for transport, billing and collection, the rates they charge to customers will increase significantly.

Q: **WHAT TYPES OF EVIDENCE DOES AN ANTITRUST ECONOMIST USE TO DETERMINE WHETHER A GROUP OF SERVICES CONSTITUTES A RELEVANT PRODUCT MARKET?**

A: Several types of evidence are examined. First, the actual pricing practices of IINS IPs reveal whether other forms of information services are good substitutes. IINS IPs stated their prices are determined by BA-NY's tariffs, as well as the extent of competition from other IINS IPs.

A second piece of evidence is the closeness of competition among IINS IPs. Closeness of competition is measured using a statistic known as the diversion ratio. The diversion ratio measures the fraction of lost sales siphoned by different competitors when a firm or group of firms unilaterally raise price. IINS IPs indicated that the vast majority of any lost sales volume associated with a unilateral price increase goes to other IINS IPs who offer the same service. This makes IINS IPs closer competitors to each other than to other types of

information providers. The high diversion ratio between them also indicates that a hypothetical merger among all IINS IPs who offer the same service would result in significant price increases.

A third piece of evidence comes from IPs' predictions of their prices if each was granted a monopoly over the particular IINS service they offer. The amount by which a hypothetical monopolist of IINS services would raise end user prices varies by the type of end user service. In the case of dating services, one IP indicated that it could profitably raise the price of a call from $0.35 up to approximately $0.55 per minute, a more than 50 percent price increase. Another believed that price increases of 30 - 50 percent would be profitable. Even at these higher rates, dating services using IINS would still be significantly less than the cheapest 900 rates in New York State.

A hypothetical monopolist of an IINS weather line would have less discretion, although prices could still be profitably raised by a small amount.

Q: IN YOUR OPINION WOULD THE ELIMINATION OF INFOFONE SERVICES RESULT IN SIGNIFICANT PRICE INCREASES TO CONSUMERS WHO NOW PURCHASE IINS?

A: Yes, the next best current alternate technology to IINS is 900 service. If all IINS IPs migrate to 900 technology, they will incur a common input price increase that will be passed through to customers. If the long run supply curve facing IPs is horizontal, prices

will increase by the full amount of the cost increase. Consistent with this, one IP predicted that prices would double if IINS IPs migrated to 900 service.

Q: WHAT IS THE CONSUMER HARM THAT WOULD BE ASSOCIATED WITH THIS PRICE INCREASE?

A: The higher prices would choke off demand for these services. Many present users of these services will find them too expensive and drop out of the market. From an equity point of view, I would not be surprised if those that discontinued purchasing were the least affluent callers who are least able to afford more expensive, alternative services.

Q: WHAT IS BA-NY'S INCENTIVE TO TERMINATE INFOFONE SERVICES?

A: I am informed by counsel that BA-NY has refused to provide information that is relevant to this issue. BA-NY did offer its own telephone information services at one time. One 1996 BA-NY document indicates the company may offer future services competitive to 976 MAS and IINS.[13] Therefore, BA-NY could have an anticompetitive motive for terminating INFOFONE services.

[13]Direct Presentation of New York Telephone Pursuant to February 12, 1996 submission by Amy D. Kanengiser, Case No. 930451.

Q: WHAT WOULD HAPPEN IF BA-NY TERMINATED INFOFONE SERVICES, CURRENT IPs EXITED, AND BA-NY RE-ENTERED THE TELEPHONE INFORMATION SERVICES MARKET?

A: In the worst case, if BA-NY (1) provided services similar to those now offered by IINS and/or MAS IPs, (2) utilized a technology which had a similar cost structure to InfoFone services, and (3) did not allow prospective IPs equal access, it would gain a downstream monopoly on certain pay-per-call information services.

Q: WHAT ARE THE POSSIBLE CONSEQUENCES IF INFOFONE IS TERMINATED AND BA-NY'S RATES FOR BILLING AND COLLECTION ARE UNREGULATED BY THE NY PSC?

A: IPs believe that it is feasible for only BA-NY to perform billing and collection, even if INFOFONE is terminated. Because BA-NY has a virtual monopoly on local phone service in New York, and virtually all calls originate on BA-NY lines, it is the only entity that can practically provide originating call detail to any billing service (including its own). Elsewhere, the PSC has determined that billing and collection are unregulated services, including the prices that BA-NY could charge to provide this call detail to a third party. Currently, BA-NY billing and collection rates are included in its tariffs to IPs and therefore are regulated. If INFOFONE is terminated, billing and collection provided by BA-NY would be an unregulated service.

There is a potential danger that BA-NY would monopoly leverage -- use its monopoly

position in local phone service to gain a monopoly in an ancillary market, such as call billing and collection. A possible motive for this is to evade regulation on tariffed services through unregulated services such as billing.